

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. No. 05-CV-11749-JLT

FELIPE FOWLKES,

Plaintiff,

v.

KATHLEEN M. DENNEHY, ET AL.,

Defendants.

**MOTION TO RECONSIDER**

Defendants<sup>1</sup>, by counsel, respectfully request that this Court reconsider its July 26, 2005 Order. The reasons for this Motion are as follows:

1. This Court issued a twenty-three page Order on March 16, 2006 after screening plaintiff's Complaint under the PLRA. This Court narrowed the number and scope of plaintiff's claims and ordered the plaintiff to show cause as to why his remaining claims should proceed. The March 16, 2006 Order allowed plaintiff to proceed on some of his claims against only four defendants.
2. On July 26, 2005, this Court issued an Order that all of the claims in plaintiff's Amended Complaint could precede against twenty named defendants and John Doe defendants.
3. In comparing plaintiff's original Complaint with his Amended Complaint there are few differences. Both the original Complaint and the Amended Complaint are dated August 15, 2005. It appears that plaintiff just added information to his original Complaint. For example, regarding plaintiff's claim for idle pay, he added three sentences to the claim from the original Complaint, just stating that he filed a grievance on the matter. (Compare

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<sup>1</sup>Defendants are not waiving any defenses related to service of process by filing this Motion.

original Complaint p.18 with Amended Complaint pp. 18-19). Also on his claim of double bunking, he added three sentences to the Amended Complaint stating he filed a grievance on the issue. (Compare original Complaint pp. 19-20 with Amended Complaint pp. 19-20).

4. In his Amended Complaint, plaintiff fails to correct the issues raised by the Court in its March 16, 2006 Order. Plaintiff's Amended Complaint is still not in compliance with Fed. R. Civ. P. 10(b). As previously stated, plaintiff simply added onto his original Complaint, without any regard as to form. Plaintiff's Amended Complaint, just like his original Complaint, does not contain paragraphs "limited as far as practicable to a statement of a single set of circumstances" pursuant to Fed. R. Civ. P. 10(b).
5. Plaintiff's Amended Complaint is confusing; there are eleven "page twenty-nines". Plaintiff has numbered these pages 29½ , 29A, etc. Also, as previously stated, both the original Complaint and the Amended Complaint are dated August 15, 2005. This Court should reaffirm its March 16, 2006 Order or order the plaintiff to file a new, corrected Amended Complaint.
6. Defendants also request that they be allowed to file a dispositive motion forty-five days after the date service is to be completed. The reason for this request, is that under the July 26, 2006 Order, all of the claims in the Amended Complaint, which is forty-seven pages long, can proceed against twenty-one plus defendants. In the interest of judicial economy, the defendants wish to wait until the date service is to be completed because if the plaintiff does not timely serve the defendants pursuant to the July 26, 2006 Order, the case may be dismissed fully or in part.

For the foregoing reasons, defendants respectfully request that this Court reconsider its July 26 Order allowing plaintiff's Amended Complaint to precede and reinstate its March 16, 2006 Order. In the alternative,

defendants request that they be allowed to file a dispositive motion forty-five days after the date of which service is to be completed.

DEFENDANTS,  
By their attorney,

NANCY ANKERS WHITE  
Special Assistant Attorney General

Dated: August 1, 2006

/s/ Daryl F. Glazer  
Daryl F. Glazer  
BBO #567138  
Dfglazer@doc.state.ma.us  
Legal Division  
Department of Correction  
70 Franklin Street, Suite 600  
Boston, MA 02110-1300  
(617) 727-3300, Ext. 102